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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

STEFFEY et al. v. KING et al.

Sept. 17, 1919.

[101 S. E. 62.]

1. Wills (§ 616 (4)*)—Devise for Life with Power of Control; Fee Created.—Where testator's will provided that it was his will and desire that his wife should have all of his property, both real estate and personalty, and that it was his desire that she should have absolute control thereof during her life, and that whatever remained at her death should go to an adopted daughter, the wife took a fee, and a remainder over was void.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 166; 11 Va.-W. Va. Enc. Dig. 811; 13 Va.-W. Va. Enc. Dig. 826.]

2. Wills (§ 616 (2)*)—Devise for Life; What Statute Controls.—Where a will took effect before the enactment of act effective June 26, 1908 (Acts 1908, c. 146), amending Code 1904, § 2418, the previous law governs, and a remainder over after the devise of a fee which was void is of no effect, though under the subsequent enactment effect would have been given to the intention of the testator.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 826.]

3. Estoppel (§ 94 (1)*)—Permitting Sale by Remaindermen.—Failure of the heirs at law of the testator's widow, who took a fee, to attack a remainder over, which was void, until more than 10 years after widow's death, held not to estop them from thereafter asserting their rights; it appearing that the sources of information as to the legal title were open alike to both parties, and there being no evidence of any admission or conduct on the part of the heirs at law which induced appellants to purchase the property from the remainderman.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 266, 268, 270.]

4. Limitation of Actions (§ 80*)—Stay Law Not Applicable to Actions to Recover Realty. Where testator devised all of his property in fee to his wife, with a void remainder over, and after the death of the wife the remainderman entered into possession, and she and her grantees held the premises adversely for more than 10 years, the rights of the wife's heirs at law were barred by limita-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

tions, Code 1887, § 2919, known as the Stay Law, as amended by Acts 1887-88, c. 295, which stayed action for the period of one year from the qualification of a personal representative, and as amended by Acts 1895-96, c. 292 (Code 1904, p. 1539), which substituted the period of one year from the death of any party not tolling the running of limitations, for the period of one year from the death of the widow, for the amendments obviously apply to personal actions.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 401, 417.]

5. Limitation of Actions (§ 80*)—Stay Law Applies Only to Party to Action.—Where a testator devised land in fee to his widow, with a void remainder over, and after death of the widow the remainderman entered, and she and her grantees held the property adversely to the widow's heirs for more than 10 years, held, that Code 1887, § 2919, as amended by Acts 1887-88, c. 295, and by Acts 1895 96, c. 292 (Code 1904, p. 1539), which provided for a stay for a period of one year from the death of any party, did not toll the running of limitations for one year from death of the widow, for the provision must refer to a party having a right of action, and under the peculiar facts the widow had no right of action against the remainderman.

Appeal from Circuit Court, Wythe County.

Bill by S. R. King and others against J. A. B. Steffey and others. From a decree for complainants, defendants appeal. Reversed.

W. B. Kegley and *W. S. Poage*, all of Wytheville, for appellants.

J. C. Shaffer, of Wytheville, for appellees.

C. B. VAN NOSTRAND & CO., Incorporated, et al. v. VIRGINIA ZINC & CHEMICAL CORPORATION, Limited, et al.

Sept. 17, 1919.

[101 S. E. 65.]

1. Mortgages (§ 278*)—Conveyance Subject to Mortgage.—While generally a conveyance of property subject to a mortgage imposes no personal liability on the grantee, the grantee takes nothing more than an equity of redemption; the land being as effectually charged with the amount of the mortgage as if the grantee had expressly assumed its payment.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 65.]

2. Mortgages (§ 304*)—Recording; Change in Form of Debt.—The rights of judgment creditors of purchaser of mortgaged prop-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.